

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
LITTLE BEAVER CREEK BASIN (39FJ)  
INTERLOCUTORY DECREE

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CLAIMANT: John S. Vassar

**CASE 39FJ-0002-I-2023**  
39FJ 17526-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

Claim 39FJ 17526-00 appeared in the Interlocutory Decree for Little Beaver Creek (Basin 39FJ) issued on September 22, 2022. The claim is owned by John Vassar. The claim received an issue remark. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

### FINDINGS OF FACT

1. Claim 39FJ 17526-00 is a claim for stock drinking directly from a spring.
2. The claim received the following issue remark:

AN UNDATED OBJECTION WAS FILED TO THE POINT OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE INTERLOCUTORY DECREE

3. The objection was submitted by former owner Virgil Lestar to the point of diversion. The objection states:

7. Basis of Objection:  
— Ownership — Place of Use — ☒ Point of Diversion  
— Priority Date — Acres Irrigated — Means of Diversion  
— Purpose of Right — Source — Period of Use  
— Volume — Flow Rate — Other  
8. Signature of Objector: X Virgil Lestar

According to a copy of the original water right papers  
39FJ-W-017526-00 should be NENESE.

4. The Statement of Claim originally listed the spring as being in the NENESE of Section 9.
5. The DNRC modified the point of diversion and place of use to the SWSWNE of Section 9 during their initial review of the claim.
6. Claimant John Vassar filed a statement confirming the claimed spring is in the NENESE of Section 9. (Doc.<sup>1</sup> 2.00)

### PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.
3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

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<sup>1</sup> “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

#### CONCLUSION OF LAW

1. The issue remark overcomes the prima facie status of claim 39FJ 17526-00. The evidence in the claim and case files shows the historical location of the claimed spring is in the NENESE of Section 9.

#### RECOMMENDATIONS

1. The point of diversion and place of use of claim 39FJ 17526-00 should be modified to the NENESE of Section 9, T5N, R61E, Fallon County.

A Post Decree Abstract of Water Right Claim reflecting the recommended changes is attached to this Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

#### Service via USPS Mail

John S Vassar  
6245 Golden Eagle Way  
Billings, MT 59106

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**LITTLE BEAVER CREEK**  
**BASIN 39FJ**

**Water Right Number:** 39FJ 17526-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** JOHN S VASSAR  
6245 GOLDEN EAGLE WAY  
BILLINGS, MT 59106

**Priority Date:** DECEMBER 31, 1963

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF LITTLE BEAVER CREEK  
**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	9	5N	61E	FALLON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31  
**Diversion Means:** FLOWING

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENESE	9	5N	61E	FALLON